

## § 1156.16

extend this time limit. The Endowment will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(b) Complaints must include a written statement identifying the parties involved, describing the alleged violation, and stating the date on which the complainant first had knowledge of the alleged violation. Complaints must be signed by the complainant. The Endowment will return any complaint that does not contain the necessary information, that is not signed by the complainant, or that is not within the Endowment's jurisdiction for any other reason. The Endowment will provide an explanation for all such returned complaints.

(c) The Endowment will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Widely disseminating information regarding the obligations of recipients under the Act and the regulations in this part.

(2) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(3) Notifying the complainant and the recipient (or their representatives) of their right to contact the Endowment for information and assistance regarding the complaint resolution process.

### § 1156.16 Mediation.

(a) *Referral of complaints for mediation.* The Endowment will promptly refer all complaints to the agency designated by the Secretary of HHS to manage the mediation process that:

(1) Fall within the jurisdiction of the regulations in this part; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informal judgment that an agreement is not possible. There must be at least one meeting with the mediator before the Endowment will accept a judgment that an agreement is not possible.

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However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing. The mediator shall send a copy of the settlement to the Endowment. No further action shall be taken by the Endowment based on that complaint unless it appears that the complainant or the recipient has failed to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) Not more than 60 days after the Endowment receives the complaint, the mediator shall return a still unresolved complaint to the Endowment for initial investigation. The mediator may return a complaint at any time before the end of the 60-day period if it appears that the complaint cannot be resolved through mediation. The mediator may extend this 60-day period, provided the Endowment concurs, for not more than 30 days, if the mediator determines that resolution is likely to occur within such period.

### § 1156.17 Investigation.

(a) *Informal investigation.* (1) The Endowment will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, the Endowment will use informal fact-finding methods, including joint or separate discussions with the complainant and the recipient to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties. The Endowment may seek the assistance of any involved State agency.

(3) The Endowment will put any agreement in writing and have it

signed by the parties and an authorized official at the Endowment.

(4) The settlement shall not affect the operation of any other enforcement effort of the Endowment, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation, conciliation, and hearing.* If the Endowment cannot resolve the complaint during the early stages of the investigation, it shall:

(1) Complete the investigation of the complaint.

(2) Attempt to achieve voluntary compliance satisfactory to the Endowment, if the investigation indicates a violation.

(3) Arrange for enforcement as described in § 1156.19, if necessary.

[63 FR 6876, Feb. 11, 1998, as amended at 68 FR 51385, Aug. 26, 2003]

#### **§ 1156.18 Prohibition against intimidation or retaliation.**

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the Endowment's investigation, conciliation and enforcement process.

#### **§ 1156.19 Compliance procedure.**

(a) The Endowment may enforce the Act and the regulations in this part through:

(1) Termination of a recipient's Federal financial assistance from the Endowment under the program or activity involved where the recipient has violated the Act and the regulations in this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, a case which is settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from the Endowment unless it is reopened because of a violation of the agreement.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the regulations in this part.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or the regulations in this part.

(b) The Endowment will limit any termination under paragraph (a)(1) of this section to the particular recipient and particular program or activity or portion thereof that the Endowment finds in violation of the regulations in this part. The Endowment will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from the Endowment.

(c) The Endowment will not take action under paragraph (a) of this section until:

(1) The Chairperson has advised the recipient of its failure to comply with the Act and the regulations in this part and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Chairperson has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. The Chairperson will file a report whenever any action is taken under paragraph (a) of this section.

(d) The Chairperson also may defer granting new Federal financial assistance from the Endowment to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from the Endowment includes all assistance for which the Endowment requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from the Endowment does not include assistance approved prior to the beginning of a termination hearing under paragraph (a)(1) of this section or increases in funding as a result of changed computation of formula awards.